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SHAWN MYERS and SARAH MYERS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAWN MYERS and SARAH MYERS,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation;  
HEATHER FONG, in her capacity as  
Chief of Police for the CITY AND  
COUNTY OF SAN FRANCISCO; JESSE  
SERNA, individually, and in his capacity  
as a police officer for the CITY AND  
COUNTY OF SAN FRANCISCO; GARY  
MORIYAMA, individually and in his  
capacity as a police officer for the CITY  
AND COUNTY OF SAN FRANCISCO;  
and San Francisco police officers and  
employees, DOES 1 through 50, inclusive,

Defendants.

Case No. C08-01163 JSW

**AMENDED JOINT CASE  
MANAGEMENT CONFERENCE  
STATEMENT**

Hearing Date: June 13, 2008  
Time: 1:30 p.m.  
Place: JSW

1 The parties submit the following amended case management statement pursuant to the Court's  
2 Case Management Conference Order, Feb. 27, 2007, and *The Standing Order for All Judges of the*  
3 *Northern District of California*. The amended document includes a time line for discovery arrived at  
4 by the parties after the ADR phone conference.

5 **1. Jurisdiction and Service**

6 This lawsuit is properly before this Court because it raises a federal question. Specifically,  
7 plaintiff alleges cause of actions under 42 U.S.C. section 1983 for alleged violations of plaintiff's  
8 constitutional rights by officers of the San Francisco Police Department.

9 **2. Facts**

10 **Defendants Version:**

11 On February 24, 2007, near the intersection of 5<sup>th</sup> and Mission Streets in San Francisco  
12 Jamal Jackson brutally beat the driver of another car in a road rage incident and then fled the scene.  
13 Jackson ditched his car, a white Nissan Sentra, near the Ferry Building and disappeared. A good  
14 Samaritan followed Jackson to the Ferry Building where she saw San Francisco police officers Serna  
15 and Moriyama on patrol. She informed the officers of her observations and pointed to the car. Serna  
16 and Moriyama went to investigate.

17 As they inspected the car, the officers were approached by plaintiff, Shawn Myers,  
18 who informed them that he had seen the driver exit the white car and run into a nearby parking lot.  
19 Officers Serna and Moriyama ran to the parking lot to search it. Plaintiff Myers had deliberately  
20 misinformed and mislead the officers. As the officers attempted to search the parking lot Jackson  
21 reappeared from an entirely different direction totally inaccessible to the parking lot. The officers  
22 attempted to contact Jackson and an accomplice who admitted to owning the car. When they tried to  
23 arrest them Jackson resisted, which required Officer Serna to use reasonable force to effect the arrest.

24 As the officers attempting to arrest Jackson and his accomplice, plaintiff, Myers,  
25 approached and began interfering with the arrest by challenging the officers and telling the officers  
26 that he "had something for them." When asked by the officers to back away from the arrest, Myers  
27 refused and then challenged the officers saying, "fuck you... shoot me mother fucker..." while at the  
28

1 same time reaching into his jacket pocket. The officers told Myers to take his hands out of his  
2 pockets, but he refused. Because Myers was interfering in the arrest, threatening the officers, and  
3 because they feared that Myers might be armed or dangerous, the officers turned their attention  
4 toward Myers and attempted to arrest him. However, when the officers approached Myers, he began  
5 to struggle. At 6'1" and 210 lbs, the officers had a difficult time containing him. It was during this  
6 struggle that suspect Jackson fled despite being handcuffed. Myers had succeeded in helping Jackson  
7 escape. Myers caused minor injuries to Officer Moriyama including injuries sustained when Myers  
8 bit Moriyama on the hand.

9           While the officers tried to arrest Myers, despite being without handcuffs, Sarah Myers  
10 appeared from nowhere and charged the officers as if she were going to attempt to free Myers or  
11 otherwise interfere. Because the officers were still struggling with the combative Myers, and because  
12 they were without handcuffs, or back-up, and were vulnerable to assault, and had no way to stop  
13 Sarah Myers from assaulting them or interfering, she was pepper sprayed.

14           Eventually, back up units arrived and Shawn and Sarah Myers were arrested. The  
15 officers used a reasonable and necessary amount of force to effect the arrest of both Myers. Jackson  
16 was apprehended a short time later hiding in Justin Herman plaza. The officers deny the allegations  
17 in the complaint and deny the use of derogatory language included in plaintiff's complaint.

18           **Plaintiff's Version:**

19           On the afternoon of February 24, 2007, Plaintiffs SHAWN MYERS and SARAH MYERS,  
20 husband and wife, went on a cruise on the Red and White Fleet out of Pier 1 in San Francisco.  
21 Following the cruise, the couple exited the ferry and walked to a valet kiosk in the parking lot  
22 immediately adjacent to the San Francisco Ferry Building and stood in line, waiting to pay for and  
23 pick up their vehicle.

24           As they stood, they saw a white car pull to the curb and park. The three occupants exited the  
25 car and walked past the couple and out of their sight. Shortly thereafter, a marked San Francisco  
26 Police van pulled to the curb proximate to the white car. Two officers, later determined to be  
27

1 Defendants SERNA and MORIYAMA, exited the van, examined the white car, and then began to  
2 look around the immediate area in an apparent attempt to locate the occupants.

3 The driver of the vehicle returned, was grabbed by Officer Serna, who placed his arms behind  
4 his back, and handcuffed him. During the cuffing, Defendant SERNA violently struck the man in the  
5 right lower back with his fist, causing him to groan in response. SERNA and Moriyama then threw  
6 the man to the ground. The man called out to the bystanders, asking if anyone saw what the officers  
7 were doing to him, and whether anyone would testify about the conduct of the officers.  
8

9 SHAWN MYERS stepped forward and stated that he had witnessed what was going on.  
10 Defendant SERNA thereupon stood, aggressively approached SHAWN MYERS, told him that he  
11 was under arrest for a felony and that he was going to jail. SHAWN MYERS repeatedly asked why  
12 he was under arrest. SERNA did not respond to this repeated inquiry, instead grabbing SHAWN  
13 MYERS around the throat and throwing him to the ground in a prone position. Officer SERNA had  
14 one knee in the back of SHAWN MYERS' neck and the other in his lower back while placing him in  
15 an "arm bar." Officer MORIYAMA assisted with the detention and arrest throughout. During this  
16 assault, SHAWN MYERS asked repeatedly why the Officers were doing this to him, also receiving  
17 no response.  
18

19 Plaintiff SARAH MYERS, witnessing this brutal treatment of her husband, also asked why  
20 the officers were doing this to him. In response, and without warning or any verbal communication at  
21 all, Officer SERNA turned and discharged his O.C. canister in SARAH MYERS' face. She was  
22 immediately in agony and unable to see, having trouble breathing as her face and mouth burned. She  
23 sat on the ground and listened as her husband pleaded with the officers to release his arm and stop  
24 their attack.  
25

26 SHAWN MYERS was placed in the rear of a police van. While he was being arrested,  
27 Officer SERNA repeatedly referred to him as "boy." When SHAWN MYERS was in the back of the  
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1 van and handcuffed, Officer SERNA entered and began verbally abusing him, calling him a  
2 “monkey,” telling him that “monkeys belong in cages,” telling him, “that’s an ugly looking white  
3 woman you got there. Couldn’t you get a prettier one?” And, in response to SHAWN MYERS  
4 informing him that he was a husband and father, telling him, “You probably don’t even know how  
5 many illegitimate kids you got.”

6 SHAWN MYERS was transported to the San Francisco jail at 850 Bryant Street, where he  
7 was held until posting bail 6 days later. He was charged with a felony violation of California Penal  
8 Code Section 69, since dismissed; a misdemeanor violation of California Penal Code Section 69; a  
9 misdemeanor violation of California Penal Code Section 243(b); and a misdemeanor violation of  
10 California Penal Code Section 148(a)(1). His case is set for trial in July of 2008.

12 SARAH MYERS was arrested on charges that she resisted, obstructed or delayed a police  
13 officer in the performance of his duties. She was handcuffed at the scene and left for many minutes  
14 on the back of a fire truck that responded to the area. She was then placed in the rear of a police  
15 patrol car and transported to Central Station, where her hands were cuffed behind her to a wall and  
16 she was left for what amounted to more than an hour. She was ultimately cited and released that  
17 evening. No charges were ever filed against SARAH MYERS.

### 19 3. Legal Issues

20 Whether the officers had reasonable suspicion and/or probable cause to detain and/or arrest  
21 Plaintiffs.

22 Whether the officers used reasonable force against plaintiffs

23 Whether the officers are entitled to qualified immunity.

24 Whether Plaintiff(s) resisted arrest, delayed, or hindered an investigation.

25 Whether Defendants' caused any of plaintiff's alleged damages.

26 Whether Plaintiff was at fault for any damages that he or she sustained.  
27  
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1 Plaintiffs claims include violation of 42 USC §1983 against officers SERNA and  
2 MORIYAMA for excessive force and false arrest, and against Chief FONG and the CITY for *Monell*  
3 violations. Plaintiffs allege that SERNA has a significant history of using excessive force and  
4 fabrication, which Defendant CITY ratified through its deliberate indifference. Plaintiffs also allege  
5 ancillary State Law causes of action, including assault and battery, false imprisonment, intentional  
6 infliction of emotional distress, violation of Civil Code Sections 51.7 and 52.1, and negligence.

#### 7 **4. Motions**

8 Defendants may move for summary judgment or partial summary judgment.

9 Defendants may move to stay *Monell* discovery and to bifurcate *Monell* issues from the  
10 underlying liability issues.

11 Defendants may move to bifurcate punitive damages issues and discovery from other issues in  
12 the case.

13 Plaintiffs anticipate filing motions to relate four other pending cases to the instant matter for  
14 the purposes of conducting *Monell* discovery. Each of the four potentially related cases, *Hwang v.*  
15 *City and County of San Francisco, et al.*, case no. C 07 2718 WDB (Date of incident: May 12, 2007),  
16 *Maestrini v. City and County of San Francisco, et al.*, case no. C 07 2941 PJH (Date of incident:  
17 October 29, 2006), *Oliver v. City and County of San Francisco, et al.*, case no. C 07 02460 JL (Date  
18 of incident: August 20, 2006), and *Jackson v. City and County of San Francisco, et al.*, case number  
19 unknown (Date of incident and incident itself identical to the instant matter), alleges use of excessive  
20 force by Defendant Officer SERNA under similar circumstances, all within a 9-month period. At a  
21 minimum, the *Monell* discovery is expected to be the same in each of the actions pertaining to  
22 discovery of Defendant Officer SERNA's background and personnel records.

23 Defendants anticipate opposing any motion to relate the above named cases as they involve  
24 different facts, different parties, and different legal issues. Furthermore, on August 14, 2007,  
25 Magistrate Judge Larson denied a motion to relate *Oliver*, *Maestrini*, and *Hwang*.

#### 26 **5. Amendment of Pleadings**

27 The parties do not anticipate amending the pleadings.  
28

1                   **6. Evidence Preservation**

2           The parties have preserved evidence.

3                   **7. Disclosures**

4           The parties will engage in initial disclosures pursuant to Fed. R. Civ. P. 26, and have agreed  
5 by to conduct disclosures by the date for hearing.

6                   **8. Discovery**

7           No discovery has yet been conducted. The parties request discovery as outlined by the  
8 Federal Rules of Civil Procedure.

9                   **9. Class Actions**

10          This case is not a class action.

11                  **10. Related Cases**

12          Defendants are aware of another lawsuit brought arising out of the same transaction, but have  
13 not seen the complaint as of this writing.

14          Plaintiffs allege that the following cases pending before the Northern District are related  
15 cases: *Hwang v. City and County of San Francisco, et al.*, case no. C 07 2718 WDB (Date of  
16 incident: May 12, 2007), *Maestrini v. City and County of San Francisco, et al.*, case no. C 07 2941  
17 PJH (Date of incident: October 29, 2006), *Oliver v. City and County of San Francisco, et al.*, case  
18 no. C 07 02460 JL (Date of incident: August 20, 2006), and *Jackson v. City and County of San*  
19 *Francisco, et al.*, case number unknown (Date of incident and incident itself identical to the instant  
20 matter).

21          Defendants anticipate opposing any motion to relate the above named cases as they involve  
22 different facts, different parties, and different legal issues. Furthermore, on August 14, 2007,  
23 Magistrate Judge Larson denied a motion to relate *Oliver*, *Maestrini*, and *Hwang*.

24                  **11. Relief**

25          Plaintiff is seeking damages, punitive damages, attorneys fees, and costs. Defendants are  
26 seeking attorneys fees and costs.

**12. Settlement and ADR**

The parties request a settlement conference before a magistrate judge. Failing that, the parties have agreed to participate in mediation.

**13. Consent to a Magistrate**

The parties do not consent to trial of this case by a United States Magistrate Judge.

**14. Other References**

The case is not suitable for such a reference.

**15. Narrowing of Issues**

The parties are not in agreement about any of the legal issues in this case.

**16. Expedited Schedule**

This case is not suitable for an expedited schedule.

**17. Scheduling**

The parties propose:

February 27, 2009 for the close of fact discovery,

April 20, 2009 for dispositive motions;

June 22, 2009 for expert disclosures;

July 24, 2009 for the completion of expert discovery.

**18. Trial**

The parties propose a trial date of September 21, 2009.

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**19. Disclosure of Non Party Interested Entities**

The parties are unaware of nonparties with such an interest in this lawsuit

Dated: June 12, 2008

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Dated: June 12, 2008

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